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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,918	04/01/2004	Deborah A. Vargo	9602	9431

27752 7590 04/18/2006

THE PROCTER & GAMBLE COMPANY
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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/815,918

Applicant(s)

VARGO ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 and 35-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 21-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>various(5)</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16 and 21-34, drawn to an absorbent article, classified in class 604, subclass 361.
- II. Claims 17-20 and 35-42, drawn to a package comprising a plurality of absorbent articles, classified in class 260, subclass 440.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the packaging does not require that each absorbent articles contained therein comprise a wetness sensation member having graphics disposed thereon. The subcombination has separate utility such as an absorbent article.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Matthew Fitzgerald on March 31, 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16 and 21-34. Affirmation of this election must be made by applicant in replying to this Office

action. Claims 17-20 and 35-42 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statements

The information disclosure statement (IDS) submitted on May 3, 2004, November 26, 2004, February 25, 2005, June 6, 2005, August 22, 2005, were each filed after the mailing date of the Application on April 1, 2004. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 9, 11-15, 21-23, 27-30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al (U.S. Patent Application Publication 2002/0169427).

With respect to **Claims 1-3,9,14,21-23,28-30**: Roe teaches a wearable article having a topsheet 24, backsheet 26, core 28 and temperature change element 50 that covers at least a portion of core 28. Element 50 has a permeable body-facing layer 52 and impermeable backing layer 54

facing said core 28 and acting as a flow control layer. Roe teaches hook and loop fastening system 40 comprised of fastening components and complimentary landing zones that defines a refastenable side seam wherein the waist regions are fastened together in an overlapping configuration to form leg openings ('961, Fig. 1). The side edges of element 50 are positioned inwardly of the article side edges, as seen in Fig. 4a. The permeable layer 52 of element 50 allows the passage of urine through to temperature change detecting substance 56 which alerts the user to the presence of urine, so detected by the fluid's higher temperature. The flow of urine in the z-direction is then prohibited by barrier layer 54.

With respect to **Claims 11,27,34**: Roe teaches a diaper having two temperature change detection elements 50a, 50b disposed parallel to one another and the longitudinal axis. (Figs. 7a, 7b) (§ 0068)

With respect to **Claims 12,13**: Roe teaches a Z-folded topsheet wherein the Z folds are disposed on the side edges and the impermeable backing layers 54a,b of the two elements 50 are disposed within the Z folds along with longitudinally extending elastic elements 92 (Claim 13) (§ 0070)

With respect to **Claim 15**: Please see the rejections of claims 9 and 11 as these rejections collectively address all of the limitations of claim 15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3761

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-8, 10, 16, 24-26 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al ('427) in view of Sosalla et al (U.S. Patent Application Publication No. 2005/0148961).

With respect to **Claims 4,5,24,25,31,32**: Roe does not teach a secondary fastening component. Sosalla teaches by reference to U.S. Patent No. 6,645,190 to Olson et al, a hook and loop fastening system that is capable of being used in tandem with adhesive fasteners. ('190, Col. 4, lines 48-52) Since Roe teaches a hook and loop fastening system and a secondary component such as an adhesive fastener would provide additional securement, it would be obvious to one of ordinary skill in the art to modify the fastening system taught by Roe as taught by Sosalla with reference to Olson.

With respect to **Claims 6-8,10,16,26,33**: Roe does not teach graphics. Sosalla teaches active interior graphics 90 disposed on liner 42 that appear when contacted with urine. ('961, ¶ 0049) These graphics are capable of highlighting the presence of the urine detection element 50 and

Art Unit: 3761

thus also its flow control layer, therefore it would be obvious to one of ordinary skill in the art to modify the topsheet taught by Roe so as to contain graphics as taught by Sosalla to highlight the presence of the temperature change element. As stated previously the temperature change element of Roe facilitates toilet training, therefore the graphics of the combined teaching of Roe and Sosalla are correlated with that purpose.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

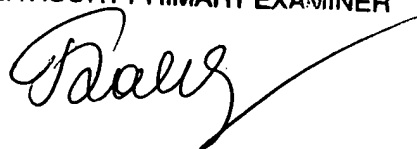
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER



Application/Control Number: 10/815,918
Art Unit: 3761

Page 7